

ORIGINAL

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 CRAIG YATES  
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 ENFORCEMENT, EDUCATION,  
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**FILED**

MAR 18 2009

RICHARD W. WIEKING  
 CLERK, U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

EMC

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

CRAIG YATES, an individual; and  
 DISABILITY RIGHTS, ENFORCEMENT,  
 EDUCATION, SERVICES:HELPING YOU  
 HELP OTHERS, a California public benefit  
 corporation,

Plaintiffs,

v.

IGNACIO PROPERTIES, LLC, a Delaware  
 limited liability company a.k.a. SHANGHAI  
 GARDEN RESTAURANT, inclusive,

Defendant

CASE NO. **09-1189**  
Civil Rights

**1189**

**COMPLAINT FOR INJUNCTIVE RELIEF  
 AND DAMAGES:**

**1<sup>st</sup> CAUSE OF ACTION:** For Denial of Access  
 by a Public Accommodation in Violation of the  
 Americans with Disabilities Act of 1990 (42  
 U.S.C. §12101, *et seq.*)

**2<sup>nd</sup> CAUSE OF ACTION:** For Denial of Full  
 and Equal Access in Violation of California  
 Civil Code §§54, 54.1 and 54.3

**3<sup>rd</sup> CAUSE OF ACTION:** For Denial of  
 Accessible Sanitary Facilities in Violation of  
 California Health & Safety Code §19955, *et seq.*

**4<sup>th</sup> CAUSE OF ACTION:** For Denial of  
 Access to Full and Equal Accommodations,  
 Advantages, Facilities, Privileges and/or  
 Services in Violation of California Civil Code  
 §51, *et seq.* (The Unruh Civil Rights Act)

**DEMAND FOR JURY**

1 Plaintiffs CRAIG YATES, an individual; and DISABILITY RIGHTS, ENFORCEMENT,  
2 EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit  
3 corporation (hereinafter sometimes referred to as "DREES"), complain of defendant IGNACIO  
4 PROPERTIES, LLC, a Delaware limited liability company a.k.a. SHANGHAI GARDEN  
5 RESTAURANT, and allege as follows:

6 **INTRODUCTION:**

7 1. This is a civil rights action for discrimination against persons with physical  
8 disabilities, of which class plaintiff CRAIG YATES and the membership of DREES are  
9 members, for failure to remove architectural barriers structural in nature at defendants' Shanghai  
10 Chinese Garden restaurant, a place of public accommodation, thereby discriminatorily denying  
11 plaintiffs and the class of other similarly situated persons with physical disabilities access to, the  
12 full and equal enjoyment of, opportunity to participate in, and benefit from, the goods, facilities,  
13 services, and accommodations thereof. Plaintiffs seek injunctive relief and damages pursuant to  
14 the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*; California Civil Code  
15 §§51, 51.5 and 54, *et seq.*; and California Health & Safety Code §19955, *et seq.*

16 2. Plaintiff CRAIG YATES is a person with physical disabilities who, on or about  
17 November 4, 2008, November 9, 2008, November 19, 2008, November 22, 2008,  
18 November 28, 2008, December 8, 2008, December 26, 2008, January 2, 2009 and February 18,  
19 2009, was an invitee, guest, patron, customer at defendants' Shanghai Garden Chinese  
20 Restaurant, in the City of Novato, California. At said time and place, defendants failed to  
21 provide proper legal access to the restaurant, which is a "public accommodation" and/or a  
22 "public facility" including, but not limited to the entry, men's restroom and women's restroom.  
23 The denial of access was in violation of both federal and California legal requirements, and  
24 plaintiff CRAIG YATES suffered violation of his civil rights to full and equal access, and was  
25 embarrassed and humiliated.

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**JURISDICTION AND VENUE:**

3. **Jurisdiction:** This Court has jurisdiction of this action pursuant to 28 U.S.C. §1331 for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.* Pursuant to pendant jurisdiction, attendant and related causes of action, arising from the same nucleus of operative facts and arising out of the same transactions, are also brought under parallel California law, whose goals are closely tied with the ADA, including but not limited to violations of California Civil Code §51, *et seq.* and §54, *et seq.*, California Health & Safety Code §19955 *et seq.*, including §19959; Title 24 California Building Standards Code.

4. **Venue:** Venue is proper in this court pursuant to 28 U.S.C. §1391(b) and is founded on the facts that the real property which is the subject of this action is located at/near 471 Entrada Drive, in the City of Novato, County of Marin, State of California, and that plaintiffs' causes of action arose in this county.

**PARTIES:**

5. Plaintiff CRAIG YATES is a "physically handicapped person", a "physically disabled person", and a "person with physical disabilities" (hereinafter the terms "physically disabled", "physically handicapped" and "person with physical disabilities" are used interchangeably, as these words have similar or identical common usage and legal meaning, but the legislative scheme in Part 5.5 of the Health & Safety Code uses the term "physically handicapped persons" and the Unruh Civil Rights Act, §§51, 51.5, 54 and 54.1, and other statutory measures refer to protection of the rights of "physically disabled persons"). Plaintiff CRAIG YATES is a "person with physical disabilities", as defined by all applicable California and United States laws. Plaintiff is a triplegic. Plaintiff CRAIG YATES requires the use of a wheelchair to travel about in public. Consequently, plaintiff CRAIG YATES is a member of that portion of the public whose rights are protected by the provisions of Health & Safety Code §19955, *et seq.* (entitled "Access to Public Accommodations by Physically Handicapped Persons") and the protections of the Unruh Civil Rights Act, Civil Code §§51 and 51.5 the Disabled Persons Act, Civil Code §54, and the Americans with Disabilities Act, 42 U.S.C. §12101, *et seq.*

1           6.       Plaintiff DISABILITY RIGHTS, ENFORCEMENT, EDUCATION, SERVICES:  
2       HELPING YOU HELP OTHERS (“DREES”) is a nonprofit (501(c)(3)) organization that works  
3       with persons with disabilities to empower them to be independent in American society. DREES  
4       accomplishes its goals and purposes through education on disability issues, enforcement of the  
5       rights of persons with disabilities, and the provision of services to persons with disabilities, the  
6       general public, public agencies and the private business sector. DREES brings this action on  
7       behalf of its members, many of whom are persons with physical disabilities and whom have  
8       standing in their right to bring this action.

9           7.       That members of DREES, like plaintiff CRAIG YATES, will or have been guests  
10       and invitees at the subject Shanghai Chinese Garden restaurant, and that the interests of plaintiff  
11       DREES in removing architectural barriers at the subject Shanghai Garden restaurant advance the  
12       purposes of DREES to assure that all public accommodations, including the subject restaurant,  
13       are accessible to independent use by mobility-impaired persons. The relief sought by plaintiff  
14       DREES as alleged herein is purely statutory in nature.

15          8.       Defendant IGNACIO PROPERTIES, LLC, a Delaware limited liability company  
16       a.k.a. SHANGHAI GARDEN RESTAURANT (hereinafter alternatively collectively referred to  
17       as “defendant”) is the owner and operator, lessor and/or lessee, or agent of the owners, lessors  
18       and/or lessees, of the public accommodation known as Shanghai Chinese Garden restaurant,  
19       located at/near 471 Entrada Drive, Novato, California, or of the building and/or buildings which  
20       constitute said public accommodation.

21          9.       At all times relevant to this complaint, defendant IGNACIO PROPERTIES, LLC,  
22       a Delaware limited liability company a.k.a. SHANGHAI GARDEN RESTAURANT, owns and  
23       operates in joint venture the subject Shanghai Chinese Garden restaurant as a public  
24       accommodation. This business is open to the general public and conducts business therein. The  
25       business is a “public accommodation” or “public facility” subject to the requirements of  
26       California Civil Code §§51, 51.5 and 54, *et seq.*, Health and Safety code §19955, *et seq.*, and the  
27       ADA, 42 U.S.C. §12101, *et seq.*

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10. At all times relevant to this complaint, defendant IGNACIO PROPERTIES, LLC, a Delaware limited liability company a.k.a. SHANGHAI GARDEN RESTAURANT, is jointly and severally responsible to identify and remove architectural barriers at the subject Shanghai Chinese Garden restaurant pursuant to Code of Federal Regulations title 28, section 36.201(b), which states in pertinent part:

**§ 36.201 General**

(b) *Landlord and tenant responsibilities.* Both the landlord who owns the building that houses a place of public accommodation and the tenant who owns or operates the place of public accommodation are public accommodations subject to the requirements of this part. As between the parties, allocation of responsibility for complying with the obligations of this part may be determined by lease or other contract.

28 CFR §36.201(b)

**PRELIMINARY FACTUAL ALLEGATIONS:**

11. The Shanghai Garden, is a restaurant, located at/near 471 Entrada Drive, Novato, California. The Shanghai Chinese Garden restaurant, its entry, men's restroom, women's restroom, and its other facilities are each a "place of public accommodation or facility" subject to the barrier removal requirements of the Americans with Disabilities Act. On information and belief, each such facility has, since July 1, 1970, undergone "alterations, structural repairs and additions", each of which has subjected the restaurant and each of its facilities, its entry, men's restroom and women's restroom to disability access requirements per the Americans with Disabilities Act Accessibility Guidelines (ADAAG), and Title 24 of the California Code of regulations (Title 24).

12. At all times stated herein, plaintiff CRAIG YATES was a member of DREES.

13. At all times referred to herein and continuing to the present time, defendants, and each of them, advertised, publicized and held out the Shanghai Chinese Garden restaurant as being handicapped accessible and handicapped usable.

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1           14.     On or about November 4, 2008, November 9, 2008, November 19, 2008,  
2 November 22, 2008, November 28, 2008, December 8, 2008, December 26, 2008, January 2,  
3 2009 and February 18, 2009, plaintiff CRAIG YATES was an invitee and guest at the subject  
4 Shanghai Chinese Garden restaurant, for purposes of having food and/or beverages.

5           15.     On or about November 4, 2008, plaintiff CRAIG YATES struggled with the entry  
6 door into the subject restaurant. After having his meal, plaintiff CRAIG YATES had need to use  
7 an accessible restroom. Plaintiff CRAIG YATES powered to the men's restroom and could not  
8 gain access.

9           16.     On or about November 9, 2008, plaintiff CRAIG YATES returned to the  
10 Shanghai Chinese Garden restaurant and encountered the same architectural barriers:

- 11                 •       a non-compliant entry door; and
- 12                 •       a inaccessible restroom.

13           17.     On this occasion, plaintiff CRAIG YATES attempted to use the women's  
14 restroom but could not gain access.

15           18.     On or about November 13, 2008, plaintiff CRAIG YATES wrote a detailed letter  
16 to both the landlord and the tenant explaining the nature of the problem with the restrooms.  
17 Plaintiff CRAIG YATES provided a diagram of what could be done to provide for a usable  
18 accessible restroom.

19           19.     Subsequently, on or about November 19, 2008, November 22, 2008 and  
20 November 28, 2008, plaintiff CRAIG YATES dined at Shanghai Chinese Garden restaurant and  
21 encountered the same architectural barriers to wit:

- 22                 •       non-compliant entrance; and
- 23                 •       inaccessible restroom.

24           20.     On or about December 8, 2008, plaintiff CRAIG YATES returned to Shanghai  
25 Garden restaurant for a take out order. While waiting for his order, an older Chinese woman  
26 approached him with a phone in her hand. It appeared she was speaking to someone. In  
27 substance, she asked him to speak to her son, which he did. The alleged son stated in substance:  
28 "We received your letter and the Health Department, o'kayed the use of the restrooms."

1 Plaintiff CRAIG YATES replied in substance: "The Health Department does not monitor or  
2 make decisions about accessible restrooms." To this, the alleged son in substance stated: "The  
3 other people in wheelchairs used the restrooms and the problem must be that your wheelchair  
4 (plaintiff CRAIG YATES's) is too big." Plaintiff CRAIG YATES inquired in substance,  
5 Whether he, (the son) spoke to the landlord about plaintiff CRAIG YATES's letter. The alleged  
6 son stated in substance, that he spoke with the landlord's management and was told that the  
7 restrooms were approved by the Health Department. Plaintiff CRAIG YATES responded that  
8 he, (the son) should have management fix it.

9 21. On or about December 26, 2008, plaintiff CRAIG YATES once again patronized  
10 the Shanghai Chinese Garden restaurant. No remedial work was being undertaken.

11 22. Plaintiff CRAIG YATES encountered the same architectural barriers:

- 12 • non-compliant entrance; and
- 13 • no accessible restrooms.

14 23. On or about January 2, 2009 and February 18, 2009, plaintiff CRAIG YATES  
15 returned to the Shanghai Restaurant. Plaintiff CRAIG YATES saw that no remedial work had  
16 been undertaken. Plaintiff CRAIG YATES encountered all the referenced architectural barriers  
17 stated herein.

18 24. Therefore, at said times and place, plaintiff CRAIG YATES,  
19 person with a disability, encountered the following inaccessible elements of the subject  
20 Shanghai Garden Chinese Restaurant which constituted architectural barriers and a denial of the  
21 proper and legally-required access to a public accommodation to persons with physical  
22 disabilities including, but not limited to:

- 23 a. lack of an accessible entrance;
- 24 b. lack of a handicapped-accessible women's public restroom;
- 25 c. lack of a handicapped-accessible men's public restroom; and
- 26 d. On personal knowledge, information and belief, other public facilities and  
27 elements too numerous to list were improperly inaccessible for use by  
28 persons with physical disabilities.

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1           25.     At all times stated herein, the existence of architectural barriers at defendants'  
2 place of public accommodation evidenced "actual notice" of defendants' intent not to comply  
3 with the Americans with Disabilities Act of 1990 either then, now or in the future.

4           26.     On or about November 13, 2008, defendant(s) were sent two (2) letters by or on  
5 behalf of plaintiff CRAIG YATES advising of the existence of architectural barriers, requesting a  
6 response within 14 days and requesting remedial measures be undertaken within 90 days or an  
7 explanation of why the time limit set could not be met and/or extenuating circumstances. The  
8 response from the tenant was that the restrooms were approved by the Health Department and  
9 nothing more needed to be done. Said letters are attached hereto collectively as exhibit "A" and  
10 incorporated by reference as though fully set forth herein.

11           27.     As a legal result of defendant IGNACIO PROPERTIES, LLC, a Delaware limited  
12 liability company a.k.a. SHANGHAI GARDEN RESTAURANT's failure to act as a reasonable  
13 and prudent public accommodation in identifying, removing or creating architectural barriers,  
14 policies, practices and procedures that denied access to plaintiffs and other persons with  
15 disabilities, plaintiffs suffered the damages as alleged herein.

16           28.     As a further legal result of the actions and failure to act of defendant, and as a  
17 legal result of the failure to provide proper handicapped-accessible public facilities as set forth  
18 herein, plaintiffs were denied their civil rights to full and equal access to public facilities. Plaintiff  
19 CRAIG YATES suffered a loss of his civil rights and his rights as a person with physical  
20 disabilities to full and equal access to public facilities.

21           29.     Further, plaintiff CRAIG YATES suffered emotional distress, mental distress,  
22 mental suffering, mental anguish, which includes, but is not limited to, shame, humiliation,  
23 embarrassment, anger, disappointment and worry, expectedly and naturally associated with a  
24 person with physical disabilities being denied access, all to his damages as prayed hereinafter in  
25 an amount within the jurisdiction of this court. No claim is being made for mental and emotional  
26 distress over and above that usually associated with the discrimination and physical injuries  
27 claimed, and no expert testimony regarding this usual mental and emotional distress will be  
28 presented at trial in support of the claim for damages.



1           30. Defendants', and each of their, failure to remove the architectural barriers  
2 complained of herein created, at the time of plaintiff CRAIG YATES's first visit to said public  
3 accommodation, and continues to create continuous and repeated exposure to substantially the  
4 same general harmful conditions which caused plaintiff CRAIG YATES harm as stated herein.

5           31. Plaintiff CRAIG YATES and the membership of DREES were denied their rights  
6 to equal access to a public facility by defendant IGNACIO PROPERTIES, LLC, a Delaware  
7 limited liability company a.k.a. SHANGHAI GARDEN RESTAURANT, because defendant  
8 IGNACIO PROPERTIES, LLC, a Delaware limited liability company a.k.a. SHANGHAI  
9 GARDEN RESTAURANT, maintained a restaurant without access for persons with physical  
10 disabilities to its facilities, including but not limited to the entry, men's restroom, women's  
11 restroom, and other public areas as stated herein, and continue to the date of filing this complaint  
12 to deny equal access to plaintiffs and other persons with physical disabilities in these and other  
13 ways.

14           32. On information and belief, construction alterations carried out by defendant has  
15 also triggered access requirements under both California law and the Americans with Disabilities  
16 Act of 1990.

17           33. Plaintiffs, as described herein below, seek injunctive relief to require the Shanghai  
18 Chinese Garden restaurant to be made accessible to meet the requirements of both California law  
19 and the Americans with Disabilities Act of 1990, whichever is more restrictive, so long as  
20 defendant operates the restaurant as a public facility.

21           34. Plaintiffs seek damages for violation of their civil rights on November 4, 2008,  
22 November 9, 2008, November 19, 2008, November 22, 2008, November 28, 2008, December 8,  
23 2008, December 26, 2008, January 2, 2009 and February 18, 2009, and they seek statutory  
24 damages of not less than \$4,000, pursuant to Civil Code §52(a) or alternatively \$1000 pursuant to  
25 Civil Code §54.3, for each day after his visit that the trier of fact (court/jury) determines was the  
26 date that some or all remedial work should have been completed under the standard that the  
27 landlord and tenant had an ongoing duty to identify and remove architectural barriers where it was  
28 readily achievable to do so, which deterred plaintiff CRAIG YATES from returning to the subject

1 public accommodation because of his knowledge and/or belief that neither some or all  
2 architectural barriers had been removed and that said premises remains inaccessible to persons  
3 with disabilities whether a wheelchair user or otherwise.

4 35. On information and belief, defendant has been negligent in their affirmative duty to  
5 identify the architectural barriers complained of herein and negligent in the removal of some or all  
6 of said barriers.

7 36. Because of defendants' violations, plaintiffs and other persons with physical  
8 disabilities are unable to use public facilities such as those owned and operated by defendants on a  
9 "full and equal" basis unless such facility is in compliance with the provisions of the Americans  
10 with Disabilities Act of 1990, Civil Code §54.1 and Health & Safety Code §19955, *et seq.* and  
11 other accessibility law as plead herein. Plaintiffs seek an order from this court compelling  
12 defendants to make the subject restaurant accessible to persons with disabilities.

13 37. On information and belief, defendant has intentionally undertaken to modify and  
14 alter existing building(s), and have failed to make them comply with accessibility requirements  
15 under the requirements of ADAAG and Title 24. The acts and omission of defendant, and each of  
16 them, in failing to provide the required accessible public facilities at the time of plaintiff's visit  
17 and injuries, indicate actual and implied malice toward plaintiffs, and despicable conduct carried  
18 out by defendant, and each of them, with a willful and conscious disregard for the rights and  
19 safety of plaintiffs and other similarly situated persons, and justify a trebling of damages as  
20 provided by Civil Code §§52(a) and 54.3, in order to make a more profound example of  
21 defendants, and each of them, to other operators and landlords of other restaurants, strip malls and  
22 other public facilities, and to punish defendants and to carry out the purposes of the Civil Code  
23 §§ 51, 51.5 and 54.

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1           38.     Plaintiffs are informed and believe and therefore allege that defendant IGNACIO  
2 PROPERTIES, LLC, a Delaware limited liability company a.k.a. SHANGHAI GARDEN  
3 RESTAURANT, and each of them, caused the subject building(s) which constitute the Shanghai  
4 Chinese Garden restaurant to be constructed, altered and maintained in such a manner that persons  
5 with physical disabilities were denied full and equal access to, within and throughout said  
6 building(s) of the restaurant and were denied full and equal use of said public facilities.  
7 Furthermore, on information and belief, defendant has continued to maintain and operate said  
8 restaurant and/or its building(s) in such conditions up to the present time, despite actual and  
9 constructive notice to such defendants that the configuration of the subject restaurant and/or its  
10 building(s) is in violation of the civil rights of persons with physical disabilities, such as plaintiff  
11 CRAIG YATES, the membership of plaintiff DREES and the disability community which  
12 DREES serves. Such construction, modification, ownership, operation, maintenance and  
13 practices of such public facilities are in violation of Civil Code §§51, 51.5 and 54, Health and  
14 Safety Code §19955, and the ADA, 42 U.S.C. §12101, *et seq.*

15           39.     On personal knowledge, information and belief, the basis of defendants' actual and  
16 constructive notice that the physical configuration of the facilities including, but not limited to,  
17 architectural barriers constituting the Shanghai Garden restaurant and/or building(s) was in  
18 violation of the civil rights of persons with physical disabilities, such as plaintiffs, includes, but is  
19 not limited to, communications with invitees and guests, plaintiff CRAIG YATES himself,  
20 owners of other restaurants, hotels, motels - and businesses, notices they obtained from  
21 governmental agencies upon modification, improvement, or substantial repair of the subject  
22 premises and other properties owned by these defendant, newspaper articles and trade publications  
23 regarding the Americans with Disabilities Act of 1990 and other access laws, public service  
24 announcements by former U.S. Attorney General Janet Reno between 1993 and 2000, and other  
25 similar information. Defendants' failure, under state and federal law, to make the Shanghai  
26 Garden restaurant accessible is further evidence of defendants' conscious disregard for the rights  
27 of plaintiff and other similarly situated persons with disabilities.

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Despite being informed of such effect on plaintiff and other persons with physical disabilities due to the lack of accessible facilities, defendant, and each of them, knowingly and willfully refused to take any steps to rectify the situation and to provide full and equal access for plaintiffs and other persons with physical disabilities to the restaurant. Said defendant, and each of them, have continued such practices, in conscious disregard for the rights of plaintiffs and other persons with physical disabilities, up to the date of filing of this complaint, and continuing thereon. Defendant had further actual knowledge of the architectural barriers referred to herein by virtue of the demand letter addressed to the defendant and served concurrently with the summons and complaint. Said conduct, with knowledge of the effect it was and is having on plaintiffs and other persons with physical disabilities, constitutes despicable conduct in conscious disregard of the rights and safety of plaintiffs and of other similarly situated persons, justifying the imposition of treble damages per Civil Code §§52 and 54.3.

40. Plaintiff CRAIG YATES and plaintiff DREES, on behalf of its membership and the disability community which it serves, consisting of persons with disabilities, would, could and will return to the subject public accommodation when it is made accessible to persons with disabilities.

**I. FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (42 U.S.C. §12101, *et seq.*)**  
 (On behalf of Plaintiffs CRAIG YATES and DISABILITY RIGHTS ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit corporation and Against Defendant IGNACIO PROPERTIES, LLC, a Delaware limited liability company a.k.a. SHANGHAI GARDEN RESTAURANT, inclusive)  
 (42 U.S.C. §12101, *et seq.*)

41. Plaintiffs replead and incorporate by reference, as if fully set forth again herein, the allegations contained in paragraphs 1 through 40 of this complaint.

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1 42. Pursuant to law, in 1990, the United States Congress made findings per 42 U.S.C.  
 2 §12101 regarding persons with physical disabilities, finding that laws were needed to more fully  
 3 protect:

4 some 43 million Americans with one or more physical or mental  
 5 disabilities; [that] historically society has tended to isolate and  
 6 segregate individuals with disabilities; [that] such forms of  
 7 discrimination against individuals with disabilities continue to be a  
 8 serious and pervasive social problem; [that] the nation's proper  
 9 goals regarding individuals with disabilities are to assure equality of  
 10 opportunity, full participation, independent living and economic  
 11 self-sufficiency for such individuals; [and that] the continuing  
 12 existence of unfair and unnecessary discrimination and prejudice  
 13 denies people with disabilities the opportunity to compete on an  
 14 equal basis and to pursue those opportunities for which our free  
 15 society is justifiably famous.

16 43. Congress stated as its purpose in passing the Americans with Disabilities Act of  
 17 1990 (42 U.S.C. §12102):

18 It is the purpose of this act (1) to provide a clear and comprehensive  
 19 national mandate for the elimination of discrimination against  
 20 individuals with disabilities; (2) to provide clear, strong, consistent,  
 21 enforceable standards addressing discrimination against individuals  
 22 with disabilities; (3) to ensure that the Federal government plays a  
 23 central role in enforcing the standards established in this act on  
 24 behalf of individuals with disabilities; and (4) to invoke the sweep  
 25 of Congressional authority, including the power to enforce the 14th  
 26 Amendment and to regulate commerce, in order to address the  
 27 major areas of discrimination faced day to day by people with  
 28 disabilities.

44. As part of the Americans with Disabilities Act of 1990, Public Law 101-336  
 (hereinafter the "ADA"), Congress passed "Title III - Public Accommodations and Services  
 Operated by Private Entities" (Section 301 42 U.S.C. §12181, *et seq.*). Among the public  
 accommodations identified for purposes of this title was:

(7) PUBLIC ACCOMMODATION - The following private  
 entities are considered public accommodations for purposes of this  
 title, if the operations of such entities affect commerce -

(B) a restaurant, bar or other establishment serving food or drink.

42 U.S.C. §12181(7)(B)

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1        45. Pursuant to §302, 42 U.S.C. §12182, "No individual shall be discriminated against  
 2 on the basis of disability in the full and equal enjoyment of the goods, services, facilities,  
 3 privileges, advantages, or accommodations of any place of public accommodation by any person  
 4 who owns, leases, or leases to, or operates a place of public accommodation."

5        46. The specific prohibitions against discrimination set forth in §302(b)(2)(a),  
 6 42 U.S.C. §12182(b)(2)(a) are:

7            (I) the imposition or application of eligibility criteria  
 8 that screen out or tend to screen out an individual with a disability  
 9 or any class of individuals with disabilities from fully and equally  
 10 enjoying any goods, services, facilities, privileges, advantages, or  
 accommodations, unless such criteria can be shown to be necessary  
 for the provision of the goods, services, facilities, privileges,  
 advantages, or accommodations being offered;

11            (ii) a failure to make reasonable modifications in  
 12 policies, practices, or procedures, when such modifications are  
 13 necessary to afford such goods, services, facilities, privileges,  
 14 advantages or accommodations to individuals with disabilities,  
 unless the entity can demonstrate that making such modifications  
 would fundamentally alter the nature of such goods, services,  
 facilities, privileges, advantages, or accommodations;

15            (iii) a failure to take such steps as may be necessary to  
 16 ensure that no individual with a disability is excluded, denied  
 17 services, segregated or otherwise treated differently than other  
 18 individuals because of the absence of auxiliary aids and services,  
 19 unless the entity can demonstrate that taking such steps would  
 fundamentally alter the nature of the good, service, facility,  
 privilege, advantage, or accommodation being offered or would  
 result in an undue burden;

20            (iv) a failure to remove architectural barriers, and  
 21 communication barriers that are structural in nature, in existing  
 facilities . . . where such removal is readily achievable; and

22            (v) where an entity can demonstrate that the removal of  
 23 a barrier under clause (iv) is not readily achievable, a failure to  
 24 make such goods, services, facilities, privileges, advantages or  
 accommodations available through alternative methods if such  
 methods are readily achievable.

25 The acts of defendant set forth herein were a violation of plaintiffs' rights under the ADA, Public  
 26 Law 101-336, and the regulations promulgated thereunder, 28 CFR Part 36, *et seq.* - Effective  
 27 January 31, 1993, the standards of the ADA were also incorporated into California Civil Code  
 28 §51, making available the damage remedies incorporated into Civil Code §51 and 52(a) and 54.3.

1           47.     The removal of the barriers complained of by plaintiffs as hereinabove alleged was  
2 at all times after January 26, 1992 “readily achievable” as to the subject building(s) of  
3 Shanghai Chinese Garden restaurant pursuant to 42 U.S.C. §12182 (b)(2)(A)(i)-(iv). On  
4 information and belief, if the removal of all the barriers complained of herein together was not  
5 “readily achievable,” the removal of each individual barrier complained of herein was “readily  
6 achievable.” On information and belief, defendants’ failure to remove said barriers was likewise  
7 due to discriminatory practices, procedures and eligibility criteria, as defined by 42 U.S.C. §12182  
8 (b)(2)(A)(i) and (ii).

9           48.     Per 42 U.S.C. §12181 (9), the term “readily achievable” means “easily  
10 accomplishable and able to be carried out without much difficulty or expense.” The statute  
11 defines relative “expense” in part in relation to the total financial resources of the entities  
12 involved. Plaintiffs allege that properly repairing, modifying, or altering each of the items that  
13 plaintiffs complain of herein were and are “readily achievable” by the defendants under the  
14 standards set forth under §301(9) of the Americans with Disabilities Act. Furthermore, if it was  
15 not “readily achievable” for defendants to remove each of such barriers, defendants have failed to  
16 make the required services available through alternative methods which were readily achievable.

17           49.     On information and belief, construction work on, and modifications of, the subject  
18 building(s) of Shanghai Garden restaurant occurred after the compliance date for the Americans  
19 with Disabilities Act, January 26, 1992, independently triggering access requirements under Title  
20 III of the ADA.

21           50.     Pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. §12188, *et*  
22 *seq.*, plaintiffs are entitled to the remedies and procedures set forth in §204(a) of the Civil Rights  
23 Act of 1964, 42 U.S.C. 2000(a)-3(a), as plaintiffs are being subjected to discrimination on the  
24 basis of disability in violation of this title or have reasonable grounds for believing that plaintiffs  
25 are about to be subjected to discrimination in violation of §302. Plaintiffs are deterred from  
26 returning to or making use of the public facilities complained of herein so long as the premises  
27 and defendants’ policies bar full and equal use by persons with physical disabilities.

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51. 42 U.S.C. 12188 (a)(1) states: "Nothing in this section shall require a person with a disability to engage in a futile gesture if such person has actual notice that a person or organization covered by this title does not intend to comply with its provisions." Pursuant to this section, plaintiff CRAIG YATES has not returned to defendants' premises since on or about February 18, 2009, but on information and belief, alleges that defendants have continued to violate the law and deny the rights of plaintiffs and of other persons with physical disabilities to access this public accommodation. Pursuant to 42 USC §12188(a)(2), "In cases of violations of §302(b)(2)(A)(iv) . . . injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities to the extent required by this title."

52. Plaintiffs seek relief pursuant to remedies set forth in §204(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000(a)-3(a)), and pursuant to federal regulations adopted to implement the Americans with Disabilities Act of 1990, including but not limited to an order granting injunctive relief and attorneys' fees. Plaintiffs will seek attorneys' fees conditioned upon being deemed to be the prevailing party.

Wherefore, plaintiffs pray for relief and damages as hereinafter stated.

**II. SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1 AND 54.3, ET SEQ.**  
 (On Behalf of Plaintiffs CRAIG YATES and DISABILITY RIGHTS, ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit corporation, and Against Defendant IGNACIO PROPERTIES, LLC, a Delaware limited liability company a.k.a. SHANGHAI GARDEN RESTAURANT inclusive)  
 (California Civil Code §§54, 54.1, 54.3, *et seq.*)

53. Plaintiffs replead and incorporate by reference as if fully set forth again herein, the allegations contained in paragraphs 1 through 52 of this complaint.

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1        54.     At all times relevant to this action, California Civil Code §54 has provided that  
 2 persons with physical disabilities are not to be discriminated against because of physical handicap  
 3 or disability. This section provides that:

4                    (a) Individuals with disabilities . . . have the same rights as  
 5 the general public to full and free use of the streets, highways,  
 6 sidewalks, walkways, public buildings, medical facilities, including  
 7 hospitals, clinics, and physicians' offices, and other public places.

8        55.     California Civil Code §54.1 provides that persons with disabilities shall not be  
 9 denied full and equal access to places of public accommodation or facilities:

10                   (a)(1) Individuals with disabilities shall be entitled to full  
 11 and equal access, as other members of the general public, to  
 12 accommodations, advantages, facilities, medical facilities, including  
 13 hospitals, clinics, and physicians' offices, and privileges of all  
 14 common carriers, airplanes, motor vehicles, railroad trains,  
 15 motorbuses, streetcars, boats, or any other public conveyances or  
 16 modes of transportation (whether private, public, franchised,  
 17 licensed, contracted, or otherwise provided), telephone facilities,  
 18 adoption agencies, private schools, hotels, lodging places, places of  
 19 public accommodation, amusement or resort, and other places to  
 20 which the general public is invited, subject only to the conditions  
 21 and limitations established by law, or state or federal regulation, and  
 22 applicable alike to all persons.

23                   Civil Code §54.1(a)(1)

24        56.     California Civil Code §54.1 further provides that a violation of the Americans with  
 25 Disabilities Act of 1990 constitutes a violation of section 54.1:

26                   (d) A violation of the right of an individual under the  
 27 Americans with Disabilities Act of 1990 (Public Law 101-336) also  
 28 constitutes a violation of this section, and nothing in this section  
 shall be construed to limit the access of any person in violation of  
 that act.

                 Civil Code §54.1(d)

1        57.     Plaintiff CRAIG YATES and the membership of plaintiff DREES are persons  
 2 within the meaning of Civil Code §54.1 whose rights have been infringed upon and violated by  
 3 the defendants, and each of them, as prescribed by Civil Code §§54 and 54.1. Each specific  
 4 architectural barrier which defendants knowingly and willfully fail and refuse to remove  
 5 constitutes a separate act in violation of Civil Code §§54 and 54.1. Plaintiffs have been and  
 6 continue to be denied full and equal access to defendants' Shanghai Chinese Garden restaurant.

1 As a legal result, plaintiffs are entitled to seek damages pursuant to a court or jury determination,  
2 in accordance with California Civil Code §54.3(a) for each day on which they visited or have been  
3 deterred from visiting the restaurant because of their knowledge and belief that the restaurant is  
4 inaccessible to persons with disabilities. California Civil Code §54.3(a) provides:

5 Any person or persons, firm or corporation, who denies or interferes  
6 with admittance to or enjoyment of the public facilities as specified  
7 in Sections 54 and 54.1 or otherwise interferes with the rights of an  
8 individual with a disability under Sections 54, 54.1 and 54.2 is  
9 liable for each offense for the actual damages and any amount as  
10 may be determined by a jury, or the court sitting without a jury, up  
11 to a maximum of three times the amount of actual damages but in  
12 no case less than . . . one thousand dollars (\$1,000) and . . .  
13 attorney's fees as may be determined by the court in addition  
14 thereto, suffered by any person denied any of the rights provided in  
15 Sections 54, 54.1 and 54.2.

16 Civil Code §54.3(a)

17 58. On or about November 4, 2008, November 9, 2008, November 19, 2008,  
18 November 22, 2008, November 28, 2008, December 8, 2008, December 26, 2008, January 2,  
19 2009 and February 18, 2009, plaintiff CRAIG YATES suffered violations of Civil Code §§54 and  
20 54.1 in that plaintiff CRAIG YATES was denied access to the entry, men's restroom, women's  
21 restroom and other public facilities as stated herein at the Shanghai Chinese Garden restaurant and  
22 on the basis that plaintiff CRAIG YATES was a person with physical disabilities.

23 59. As a result of the denial of equal access to defendants' facilities due to the acts and  
24 omissions of defendants, and each of them, in owning, operating and maintaining these subject  
25 public facilities, plaintiffs suffered violations of plaintiffs' civil rights, including but not limited to  
26 rights under Civil Code §§54, 54.1 and 54.3.

27 60. Further, plaintiff CRAIG YATES suffered mental distress, mental suffering, mental  
28 anguish, which includes shame, humiliation, embarrassment, frustration, anger, disappointment  
and worry, all of which are expectedly and naturally associated with a denial of access to a person  
with physical disabilities, all to plaintiff's damages as hereinafter stated.

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1 Defendants' actions and omissions to act constituted discrimination against plaintiff on the sole  
2 basis that plaintiffs are persons or an entity that represents persons with physical disabilities and  
3 unable, because of the architectural barriers created and maintained by the defendants in violation  
4 of the subject laws, to use the public facilities hereinabove described on a full and equal basis as  
5 other persons.

6 61. Plaintiffs have been damaged by defendants', and each of their, wrongful conduct  
7 and seeks the relief that is afforded by Civil Code §§54 and 54.1, 54.3 for violation of plaintiffs'  
8 rights as persons or an entity that represents persons with physical disabilities on or about  
9 November 4, 2008, November 9, 2008, November 19, 2008, November 22, 2008, November 28,  
10 2008, December 8, 2008, December 26, 2008, January 2, 2009 and February 18, 2009, and on a  
11 continuing basis since then, including statutory damages, a trebling of all of actual damages,  
12 general and special damages available pursuant to §54.3 of the Civil Code according to proof.

13 62. As a result of defendants', and each of their, acts and omissions in this regard,  
14 plaintiffs have been required to incur legal expenses and hire attorneys in order to enforce  
15 plaintiffs' rights and enforce the provisions of the law protecting access for persons with physical  
16 disabilities and prohibiting discrimination against persons with physical disabilities. Pursuant to  
17 the provisions of Civil Code §54.3, plaintiffs therefore will seek recovery in this lawsuit for all  
18 reasonable attorneys' fees and costs incurred if deemed the prevailing party. Additionally,  
19 plaintiffs' lawsuit is intended not only to obtain compensation for damages to plaintiffs, but also  
20 to compel the defendants to make their facilities accessible to all members of the public with  
21 disabilities, justifying public interest attorneys' fees, if deemed the prevailing party, pursuant to  
22 the provisions of §1021.5 of the Code of Civil Procedure.

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Wherefore, plaintiffs pray for relief and damages as hereinafter stated.

**III. THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE SANITARY FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE §19955, ET. SEQ.**  
 (On Behalf of Plaintiffs CRAIG YATES and DISABILITY RIGHTS, ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit corporation and Against Defendant IGNACIO PROPERTIES, LLC, a Delaware limited liability company a.k.a. SHANGHAI GARDEN RESTAURANT, inclusive)  
 (Health & Safety Code §19955, *et seq.*)

63. Plaintiffs replead and incorporate by reference, as if fully set forth again herein, the allegations contained in paragraphs 1 through 62 of this complaint.

64. Health & Safety Code §19955 provides in pertinent part:

The purpose of this part is to insure that public accommodations or facilities constructed in this state with private funds adhere to the provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the Government Code. For the purposes of this part "public accommodation or facilities" means a building, structure, facility, complex, or improved area which is used by the general public and shall include auditoriums, hospitals, theaters, restaurants, hotels, motels, stadiums, and convention centers. When sanitary facilities are made available for the public, clients or employees in such accommodations or facilities, they shall be made available for the handicapped.

65. Health & Safety Code §19956, which appears in the same chapter as §19955, provides in pertinent part, "accommodations constructed in this state shall conform to the provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the Government Code . . . ." Health & Safety Code §19956 was operative July 1, 1970, and is applicable to all public accommodations constructed or altered after that date. On information and belief, portions of the Shanghai Chinese Garden restaurant and/or of the building(s) were constructed and/or altered after July 1, 1970, and substantial portions of the restaurant and/or the building(s) had alterations, structural repairs, and/or additions made to such public accommodations after July 1, 1970, thereby requiring said restaurant and/or building to be subject to the requirements of Part 5.5, §19955, *et seq.*, of the Health & Safety Code upon such alteration, structural repairs or additions per Health & Safety Code §19959.

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66. Pursuant to the authority delegated by Government Code §4450, *et seq*, the State Architect promulgated regulations for the enforcement of these provisions. Effective July 1, 1982, Title 24 of the California Building Standards Code adopted the California State Architect's Regulations and these regulations must be complied with as to any alterations and/or modifications of the restaurant and/or the building(s) occurring after that date. Construction changes occurring prior to this date but after July 1, 1970 triggered access requirements pursuant to the "ASA" requirements, the American Standards Association Specifications, A117.1-1961. On information and belief, at the time of the construction and modification of said building, all buildings and facilities covered were required to conform to each of the standards and specifications described in the American Standards Association Specifications and/or those contained in Title 24 of the California Building Standards Code.

67. Restaurants such as the Shanghai Chinese Garden restaurant are "public accommodations or facilities" within the meaning of Health & Safety Code §19955, *et seq*.

68. As a result of the actions and failure to act of defendants, and as a result of the failure to provide proper and legally handicapped-accessible public facilities, plaintiffs were denied plaintiffs' rights to full and equal access to public facilities and suffered a loss of plaintiffs' civil rights and plaintiffs' rights as persons with physical disabilities to full and equal access to public facilities.

69. Attorneys' Fees -- As a result of defendants' acts and omissions in this regard, plaintiffs have been required to incur legal expenses and hire attorneys in order to enforce plaintiffs' civil rights and enforce provisions of the law protecting access for the persons with physical disabilities and prohibiting discrimination against the persons with physical disabilities, and to take such action both in plaintiffs' own interests and in order to enforce an important right affecting the public interest. Plaintiffs, therefore, seek in this lawsuit the recovery of all reasonable attorneys' fees incurred, pursuant to the provisions of the Code of Civil Procedure §1021.5. Plaintiffs additionally seek attorneys' fees pursuant to Health & Safety Code §19953 and Civil Code §§54.3 and/or in the alternative, plaintiffs will seek attorneys' fees, costs and litigation expenses pursuant to §204(a) of the Civil Rights Act of 1964 (42 U.S.C. 200(a)-3(a)).

1 Plaintiffs will seek attorneys' fees conditioned upon being deemed to be the prevailing party.

2 70. Plaintiffs seek injunctive relief for an order compelling defendants, and each of  
3 them, to make the subject place of public accommodation readily accessible to and usable by  
4 persons with disabilities.

5 Wherefore, plaintiffs pray for damages and relief as hereinafter stated.

6 **IV. FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO FULL AND  
7 EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES, PRIVILEGES  
8 AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL CODE §51, ET  
9 SEO. (THE UNRUH CIVIL RIGHTS ACT)**

10 (On Behalf of Plaintiffs CRAIG YATES and DISABILITY RIGHTS, ENFORCEMENT,  
11 EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit  
12 corporation, and Against Defendant IGNACIO PROPERTIES, LLC, a Delaware limited  
13 liability company a.k.a. SHANGHAI GARDEN RESTAURANT, inclusive)  
14 (Civil Code §51, 51.5)

15 71. Plaintiffs replead and incorporate by reference, as if fully set forth again herein, the  
16 allegations contained in paragraphs 1 through 70 of this complaint.

17 72. Defendants' actions and omissions and failure to act as a reasonable and prudent  
18 public accommodation in identifying, removing and/or creating architectural barriers, policies,  
19 practices and/or procedures violates §51 of the Civil Code, the Unruh Civil Rights Act. The  
20 Unruh Act provides:

21 This section shall be known, and may be cited, as the Unruh  
22 Civil Rights Act.

23 All persons within the jurisdiction of this state are free and  
24 equal, and no matter what their sex, race, color, religion, ancestry,  
25 national origin, or **disability** are entitled to the full and equal  
26 accommodations, advantages, facilities, privileges, or services in all  
27 business establishments of every kind whatsoever.

28 This section shall not be construed to confer any right or  
privilege on a person that is conditioned or limited by law or that is  
applicable alike to persons of every sex, color, race, religion,  
ancestry, national origin, or **disability**.

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1 Nothing in this section shall be construed to require any  
 2 construction, alteration, repair, structural or otherwise, or  
 3 modification of any sort whatsoever, beyond that construction,  
 4 alteration, repair, or modification that is otherwise required by other  
 5 provisions of law, to any new or existing establishment, facility,  
 6 building, improvement, or any other structure . . . nor shall anything  
 7 in this section be construed to augment, restrict, or alter in any way  
 8 the authority of the State Architect to require construction,  
 9 alteration, repair, or modifications that the State Architect otherwise  
 10 possesses pursuant to other . . . laws.

11 A violation of the right of any individual under the  
 12 Americans with Disabilities Act of 1990 (Public Law 101-336) shall  
 13 also constitute a violation of this section.

14 As the Unruh Act incorporates violations of the Americans with Disabilities Act of 1990, the  
 15 “intent” of the defendants in not complying with barrier removal is not an issue. Hence, the  
 16 failure on the parts of defendants, as reasonable and prudent public accommodations, in acting or  
 17 failing to act to identify and remove barriers can be construed as a “negligent per se” act of  
 18 defendants, and each of them.

19 73. The acts and omissions of defendant stated herein are discriminatory in nature and  
 20 in violation of Civil Code §51.5:

21 No business establishment of any kind whatsoever shall  
 22 discriminate against, boycott or blacklist, refuse to buy from, sell to,  
 23 or trade with any person in this state because of the race, creed,  
 24 religion, color, national origin, sex, or **disability** of the person or of  
 25 the person’s partners, members, stockholders, directors, officers,  
 26 managers, superintendents, agents, employees, business associates,  
 27 suppliers, or customers.

28 As used in this section, “person” includes any person, firm  
 association, organization, partnership, business trust, corporation,  
 limited liability company, or company.

Nothing in this section shall be construed to require any  
 construction, alteration, repair, structural or otherwise, or  
 modification of any sort whatsoever, beyond that construction,  
 alteration, repair or modification that is otherwise required by other  
 provisions of law, to any new or existing establishment, facility,  
 building, improvement, or any other structure . . . nor shall anything  
 in this section be construed to augment, restrict or alter in any way  
 the authority of the State Architect to require construction,  
 alteration, repair, or modifications that the State Architect otherwise  
 possesses pursuant to other laws.

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1        74. Defendants' acts and omissions as specified have denied to plaintiffs full and equal  
2 accommodations, advantages, facilities, privileges and services in a business establishment, on the  
3 basis of physical disability, in violation of Civil Code §§51 and 51.5, the Unruh Civil Rights Act.  
4 Furthermore, pursuant to the 1992 amendment to California Civil Code §51, "A violation of the  
5 right of any individual under the Americans with Disabilities Act of 1990 (Public Law 101-336)  
6 shall also constitute a violation of this section." Plaintiffs accordingly incorporate the entirety of  
7 their above cause of action for violation of the Americans with Disabilities Act at §41, *et seq.*, as  
8 if replied herein.

9        75. As a legal result of the violation of plaintiff CRAIG YATES's civil rights as  
10 hereinabove described, plaintiff CRAIG YATES has suffered statutory and general damages.

11        76. Further, plaintiff CRAIG YATES suffered emotional distress (all to plaintiff's  
12 damage according to proof, and incurred reasonable attorneys' fees and costs). Plaintiffs CRAIG  
13 YATES and DREES are entitled to the rights and remedies of §52(a) of the Civil Code, including  
14 trebling of actual damages (defined by §52(h) of the Civil Code to mean "special and general  
15 damages"), as well as to reasonable attorneys' fees and costs, as is allowed by statute, according to  
16 proof if deemed to be the prevailing party.

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1 **PRAYER:**

2 Plaintiffs pray that this court award damages and provide relief as follows:

3 **I. PRAYER FOR FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A**  
 4 **PUBLIC ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH**  
 5 **DISABILITIES ACT OF 1990 (42 U.S.C. §1 2101, *et seq.*)**

6 (On Behalf of Plaintiffs CRAIG YATES and DISABILITY RIGHTS ENFORCEMENT,  
 7 EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit  
 8 corporation, and Against Defendant IGNACIO PROPERTIES, LLC, a Delaware limited  
 9 liability company a.k.a. SHANGHAI GARDEN RESTAURANT, inclusive)  
 10 (42 U.S.C. §12101, *et seq.*)

11 1. For injunctive relief, compelling defendant IGNACIO PROPERTIES, LLC, a  
 12 Delaware limited liability company a.k.a. SHANGHAI GARDEN RESTAURANT, inclusive, to  
 13 make the Shanghai Chinese Garden restaurant, located at 471 Entrada Drive, Novato, California,  
 14 readily accessible to and usable by individuals with disabilities, per 42 U.S.C §12181, *et seq.*, and  
 15 to make reasonable modifications in policies, practice, eligibility criteria and procedures so as to  
 16 afford full access to the goods, services, facilities, privileges, advantages and accommodations  
 17 being offered.

18 2. For attorneys' fees, litigation expenses and costs of suit, if plaintiffs are deemed  
 19 the prevailing party; and

20 3. For such other and further relief as the court may deem proper.

21 **II. PRAYER FOR SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND**  
 22 **EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1**  
 23 **AND 54.3, *ET SEQ.***

24 (On Behalf of Plaintiffs CRAIG YATES and DISABILITY RIGHTS ENFORCEMENT,  
 25 EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit  
 26 corporation, and Against Defendant IGNACIO PROPERTIES, LLC, a Delaware limited  
 27 liability company a.k.a. SHANGHAI GARDEN RESTAURANT, inclusive)  
 28 (California Civil Code §§54, 54.1, 54.3, *et seq.*)

1. For injunctive relief, compelling defendants IGNACIO PROPERTIES, LLC, a  
 Delaware limited liability company a.k.a. SHANGHAI GARDEN RESTAURANT, inclusive, to  
 make the Shanghai Chinese Garden restaurant, located at 471 Entrada Drive, Novato, California,  
 readily accessible to and usable by individuals with disabilities, per state law.

2. Statutory damages as afforded by Civil Code §54.3 for the date of incident and for  
 each occasion on which plaintiffs were deterred from returning to the subject public  
 accommodation;

3. Attorneys' fees pursuant to Civil Code §54.3 and Code of Civil Procedure §1021.5,  
if plaintiffs are deemed the prevailing party;

4. Treble damages pursuant to Civil Code §54.3;

5. General damages according to proof;

6. For all costs of suit;

7. Prejudgment interest pursuant to Civil Code §3291; and

8. Such other and further relief as the court may deem just and proper.

**III. PRAYER FOR THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE  
SANITARY FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE  
§19955, ET. SEQ.**

(On Behalf of Plaintiffs CRAIG YATES and DISABILITY RIGHTS ENFORCEMENT,  
EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit  
corporation, and Against Defendant IGNACIO PROPERTIES, LLC, a Delaware limited  
liability company a.k.a. SHANGHAI GARDEN RESTAURANT, inclusive)  
(Health & Safety code §19955, *et seq.*)

1. For injunctive relief, compelling defendant IGNACIO PROPERTIES, LLC, a  
Delaware limited liability company a.k.a. SHANGHAI GARDEN RESTAURANT, inclusive, to  
make the Shanghai Chinese Garden restaurant, located at 471 Entrada Drive, Novato, California,  
readily accessible to and usable by individuals with disabilities, per state law.

2. For attorneys' fees pursuant to Code of Civil Procedure §1021.5, and/or,  
alternatively, Health & Safety Code §19953, if plaintiffs are deemed the prevailing party;

3. For all costs of suit;

4. For prejudgment interest pursuant to Civil Code §3291; and

5. Such other and further relief as the court may deem just and proper.

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1 **IV. PRAYER FOR FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO**  
 2 **FULL AND EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES,**  
 3 **PRIVILEGES AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL**  
 4 **CODE §51, *ET SEQ.* (THE UNRUH CIVIL RIGHTS ACT)**

5 (On Behalf of Plaintiffs CRAIG YATES and DISABILITY RIGHTS ENFORCEMENT,  
 6 EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit  
 7 corporation and Against Defendant IGNACIO PROPERTIES, LLC, a Delaware limited  
 8 liability company a.k.a. SHANGHAI GARDEN RESTAURANT, inclusive)  
 9 (California Civil Code §§51, 51.5, *et seq.*)

10 1. All statutory damages as afforded by Civil Code §52(a) for the date of incident and  
 11 for each occasion on which plaintiffs were deterred from returning to the subject public  
 12 accommodation;

13 2. Attorneys' fees pursuant to Civil Code §52(a), if plaintiffs are deemed the  
 14 prevailing party;

15 3. General damages according to proof;

16 4. Treble damages pursuant to Civil Code §52(a);

17 5. For all costs of suit;

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6. Prejudgment interest pursuant to Civil Code §3291; and
7. Such other and further relief as the court may deem just and proper.

Dated: 3/5/09, 2009

THOMAS E. FRANKOVICH,  
*A PROFESSIONAL LAW CORPORATION*

By: 

THOMAS E. FRANKOVICH  
Attorneys for Plaintiffs CRAIG YATES and DISABILITY  
RIGHTS ENFORCEMENT, EDUCATION, SERVICES:  
HELPING YOU HELP OTHERS, a California public  
benefit corporation

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a jury for all claims for which a jury is permitted.

Dated: 3/5/09, 2009

THOMAS E. FRANKOVICH,  
*A PROFESSIONAL LAW CORPORATION*

By: 

THOMAS E. FRANKOVICH  
Attorneys for Plaintiffs CRAIG YATES and DISABILITY  
RIGHTS, ENFORCEMENT, EDUCATION, SERVICES:  
HELPING YOU HELP OTHERS, a California public  
benefit corporation



# **EXHIBIT A**

Craig Yates  
1004 Los Gamos Road, Unit E  
San Rafael, CA 94903

November 13, 2008

Manager  
Shanghai Garden Restaurant  
471 Entrada Drive  
Novato, CA 94949

Dear Manager of Shanghai Garden:

Recently, I dined at the Shanghai Garden Restaurant. The food was quite good but use of the restroom was quite bad. You see I use a wheelchair and I couldn't get into the men's restroom because it's too small. So, I couldn't use it and I doubt other wheelchair users could.

This letter is written the same to the owner of the building and the manager of Shanghai Garden Restaurant. You see I think it's easy to make an accessible restroom. I think there are these things you could consider:

- One, combine the men's and women's restroom and make one unisex usable restroom;
- Two, close off the hallway at the kitchen and use the hallway as part of the men's restroom. Then make the men's restroom the unisex accessible, and women's restroom just unisex. \*See my diagram; or
- Third, use part of the big employee's storage room as a unisex restroom.

If you do #2, the employees will just walk around through part of the dining room.

I would really appreciate it if you would give me written assurance within the next two weeks that you will take care of these problems within the next three months. I'd like a written agreement. If you cannot do this would you forward my letter to whomever is in charge. I'd like to come back to Shanghai Garden once it's accessible to me. I may still come back before you do the work just because I like the place. If there is some problem doing this, please let me know. Would you please reply to my letter by FedEx to make sure I get your response?

If you need information on exactly what you need to do, you can contact Pacific ADA and IT Center in Oakland at 1-800-949-4232, or the federal government at 1-800-514-0301. Either of them can send you a copy of the ADA and ADAAG codes, specifications, diagrams and manuals so that you can do the work yourself or have someone do it for you. You could also get a list of barriers common to places like yours and do your own inspection for barriers and remove them.

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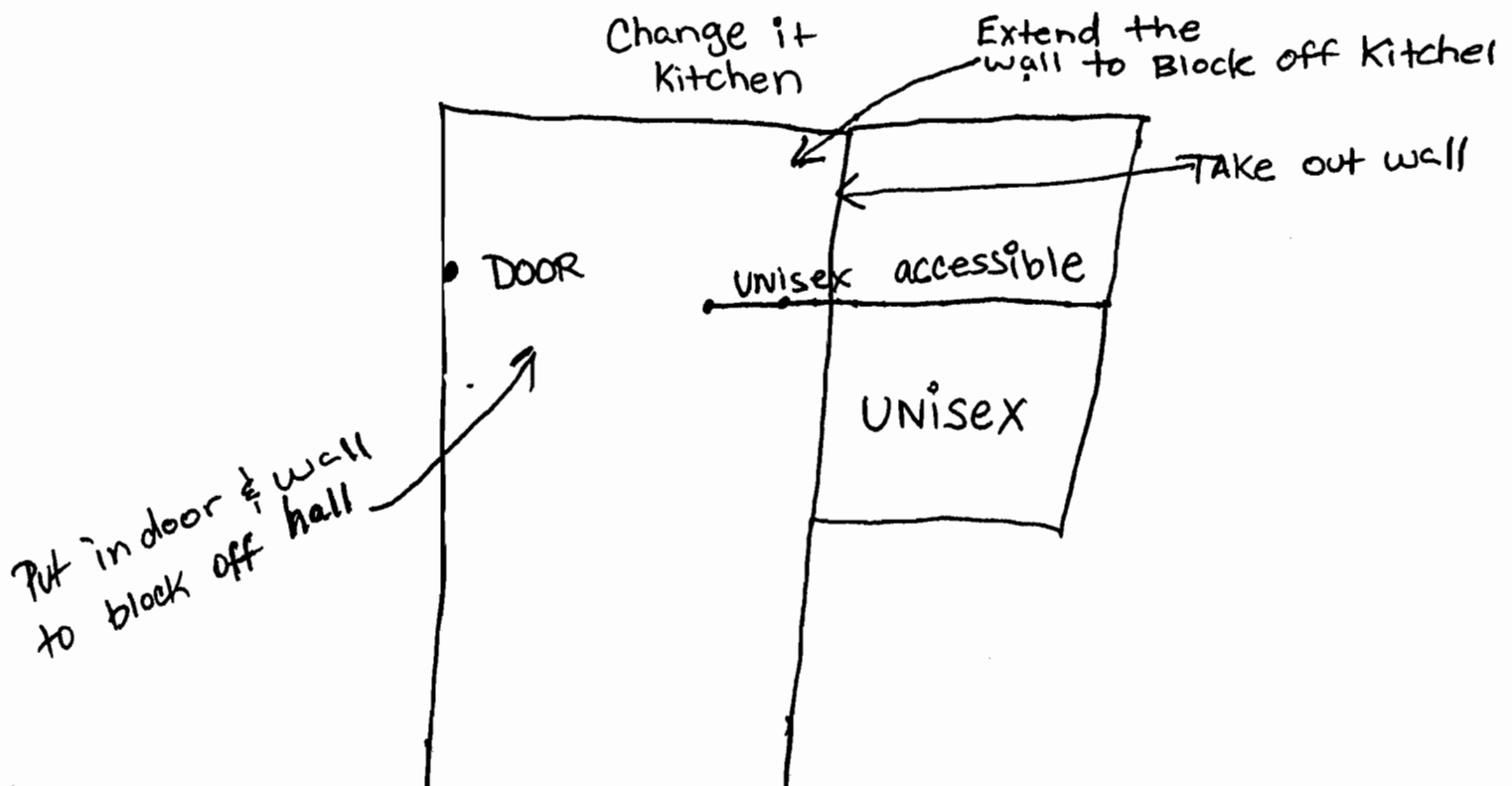
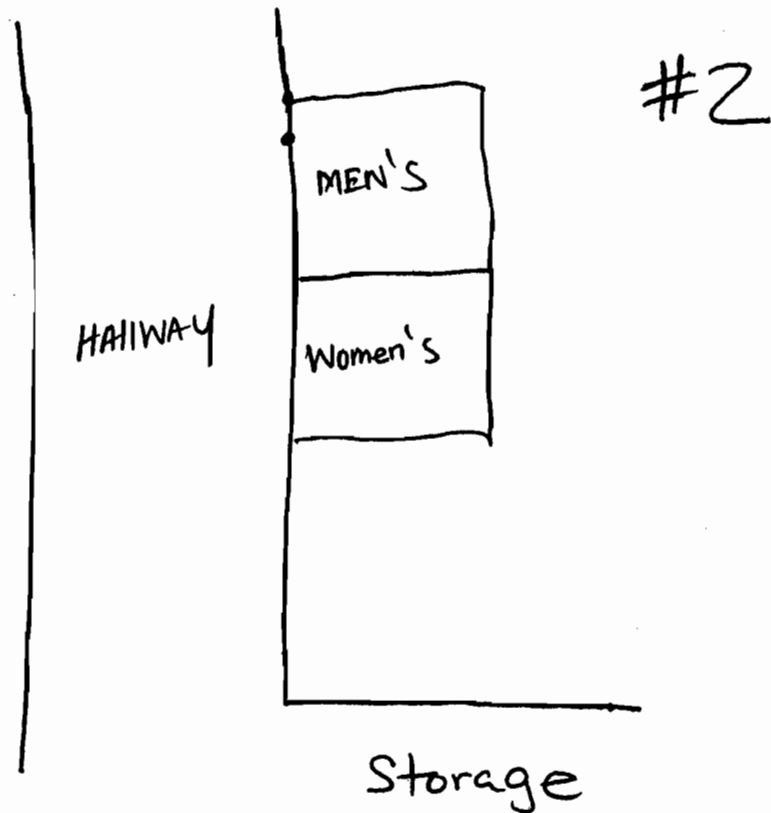
I was told that, if you make less than a million dollars per year and have a few employees, that you can get a \$10,000 tax credit to make your place accessible. That's a great deal. You can get information on this from the two places I mentioned above. You should talk to your accountant about it. Maybe your accountant already has this information or knows about it.

Thank you for considering my request.

Thank You,

A handwritten signature in black ink, appearing to read "Craig Yates", written in a cursive style.

Craig Yates





Craig Yates  
1004 Los Gamos Road, Unit E  
San Rafael, CA 94903

November 13, 2008

Owner of Building  
Shanghai Garden Restaurant  
471 Entrada Drive  
Novato, CA 94949

Dear Owner of Building for Shanghai Garden:

Recently, I dined at the Shanghai Garden Restaurant. The food was quite good but use of the restroom was quite bad. You see I use a wheelchair and I couldn't get into the men's restroom because it's too small. So, I couldn't use it and I doubt other wheelchair users could.

This letter is written the same to the owner of the building and the manager of Shanghai Garden Restaurant. You see I think it's easy to make an accessible restroom. I think there are these things you could consider:

- One, combine the men's and women's restroom and make one unisex usable restroom;
- Two, close off the hallway at the kitchen and use the hallway as part of the men's restroom. Then make the men's restroom the unisex accessible, and women's restroom just unisex. \*See my diagram; or
- Third, use part of the big employee's storage room as a unisex restroom.

If you do #2, the employees will just walk around through part of the dining room.

I would really appreciate it if you would give me written assurance within the next two weeks that you will take care of these problems within the next three months. I'd like a written agreement. If you cannot do this would you forward my letter to whomever is in charge. I'd like to come back to Shanghai Garden once it's accessible to me. I may still come back before you do the work just because I like the place. If there is some problem doing this, please let me know. Would you please reply to my letter by FedEx to make sure I get your response?

If you need information on exactly what you need to do, you can contact Pacific ADA and IT Center in Oakland at 1-800-949-4232, or the federal government at 1-800-514-0301. Either of them can send you a copy of the ADA and ADAAG codes, specifications, diagrams and manuals so that you can do the work yourself or have someone do it for you. You could also get a list of barriers common to places like yours and do your own inspection for barriers and remove them.

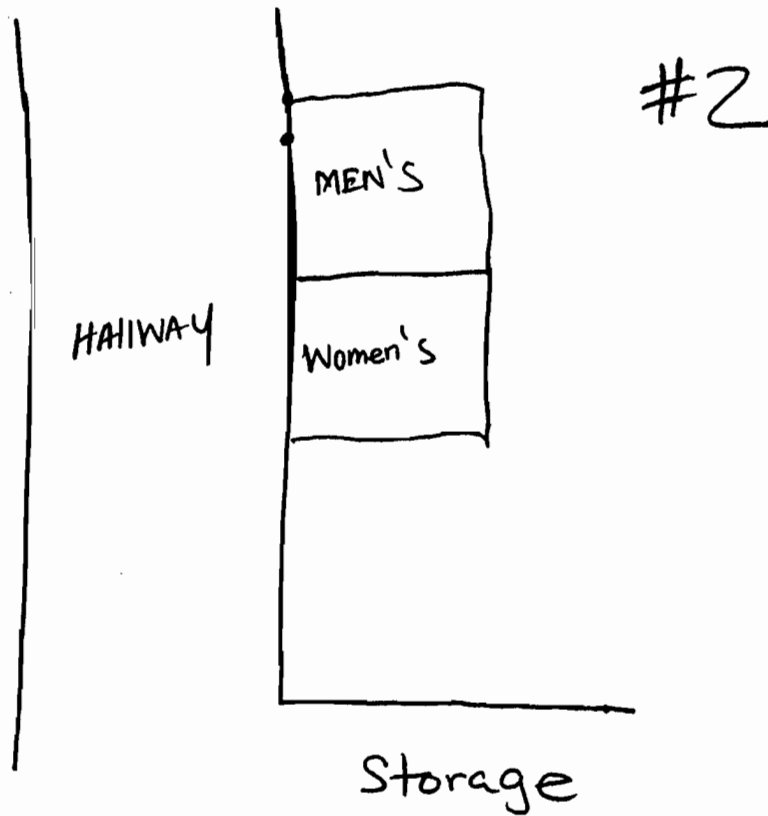
I was told that, if you make less than a million dollars per year and have a few employees, that you can get a \$10,000 tax credit to make your place accessible. That's a great deal. You can get information on this from the two places I mentioned above. You should talk to your accountant about it. Maybe your account already has this information or knows about it.

Thank you for considering my request.

Thank You

A handwritten signature in black ink, appearing to read "Craig Yates", written in a cursive style.

Craig Yates



Change it  
Kitchen

Extend the  
wall to Block off Kitchen

TAKE out wall

DOOR

unisex accessible

UNISEX

Put in door & wall  
to block off hall

